(8)

No. 96-1584

In the
Supreme Court of the United States
October Term, 1997

TERRY CAMPBELL,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

1 (a). Whether a white criminal defendant has standing to bring an equal protection claim based upon the exclusion of African-Americans from service as state grand jury foremen.

(b). Whether a white defendant has standing to bring a due process claim based upon the exclusion of African-Americans from service as state grand jury foremen.

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BRIEF FOR RESPONDENT

STATEMENT OF THE CASE

On February 4, 1992, petitioner Terry Campbell, a white male, was indicted by a grand jury for the Thirteenth Judicial District, Parish of Evangeline, State of Louisiana, in the shooting death of James L. Sharp, also a white male. R. 19-20. Three of the indicting grand jurors were black. [1]

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[1] Counsel for petitioner and respondent herein have filed with the Court a pleading entitled *Joint Stipulation Of Counsel*, which was

Petitioner was formally charged with second-degree murder in violation of La. R.S. 14:30.1.[2] Following a 12-person jury trial, wherein Campbell peremptorily struck five blacks from the jury, petitioner was convicted as charged. R. 12-16. Six of the convicting jurors were black. On May 20, 1994, the trial judge sentenced petitioner to the mandatory term of life imprisonment without benefit of probation, parole or suspension of sentence. R. 18.

1. Background

The Louisiana Court of Appeal, Third Circuit, summarized the evidence underlying Campbell's conviction and sentence in its affirmation on appeal. *See State v. Campbell*, 673 So. 2d 1061, 1063-1064 (La. Ct. App. 3d Cir. 1996), *writ denied*, 685 So. 2d 140 (La. 1997), *cert. granted*

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pending before the Court at the time respondent's brief was being prepared. The joint stipulation was drafted in light of language in the *Powers v. Ohio*, 499 U.S., 400 (191), opinion that the record in that case "does not indicate that race was somehow implicated in the crime or the trial; nor does it reveal whether any black persons sat on petitioner's petit jury or if any of the nine jurors petitioner excused by peremptory challenges were black persons." *Powers*, 499 U.S. at 403. The record herein reveals that race was not a factor in petitioner's trial. Further, the stipulation shows that three blacks served on petitioner's grand jury, that six blacks served on the petit jury of 12 members (the alternate was also black), and that the petitioner used five of his maximum 12 peremptory challenges to strike five black prospective jurors, compared to the State's using one of its 11 peremptory strikes against a black prospective juror.

[2] Louisiana law provides that a person convicted of second-degree murder serves a mandatory sentence of life imprisonment without benefit of probation, parole or suspension of sentence. *See* Appendix A at 1A.. Furthermore, the Louisiana Constitution requires that any person subjected to life imprisonment must be charged by grand jury indictment. La. Const. art. 1, § 15 (1974), and La.C.Cr.P. art. 382(A) (West 1992). *See* App. G at 29A and App. B at 2A.

in part, Campbell v. Louisiana, __ U.S. __, 118 S. Ct. 29 (1997). *See also Pet.* at E-3 and E-4. During trial, petitioner, age 31, did not contest that, during the early morning hours of January 11, 1992, he shot to death Mr. Sharp, age 46, at the home of petitioner's estranged wife, Susan, following the victim having given Susan Campbell a ride home from an evening out with friends. Campbell shot the victim twice at close range as the victim was backing out of the driveway; the shooting caused the victim to lose control of his vehicle, ramming it into a natural gas meter. The victim, who died at the scene, had offered Susan Campbell a ride home when the girlfriend she had accompanied to the night club earlier in the evening wanted to stay longer. R. 410-420, 622-637.

During the first trial, which ended in a joint motion for a mistrial on January 12, 1994, the defense stipulated that the defendant had shot the victim and based the defense upon a plea of insanity. R. 8-11, 61-62, 410-420. In the second trial represented by new lawyers, Richard V. Burnes and Raymond LeJeune, and consistent with the earlier position of not contesting the shooting itself, petitioner again without the stipulation presented the defense of insanity, having previously entered a plea of not guilty and not guilty by reason of insanity. The defense of insanity stemmed from a head injury petitioner had received six years earlier. The evidence at trial was undisputed that on August 6, 1986, Campbell suffered a severe head injury, which doctors testified resulted in organic brain damage, chronic pain syndrome, and epileptic seizures. *Pet.* at E-3. *See also* R. 609-610, 622-637, 716-734, 756-757, 761-765, 870-871 and *State v. Campbell*, 673 So. 2d at 1063. Aside from the assignment of error on appeal concerning petitioner's motion to quash, which is now before this Court, the Louisiana Court of Appeal, Third Circuit, denied relief on all of petitioner's remaining assignments of error on appeal and

affirmed petitioner's conviction and sentence; the Louisiana Supreme Court on January 10, 1997, further declined to exercise its supervisory jurisdiction. *State v. Campbell*, 685 So. 2d 140 (La. 1997), *cert. granted in part, Campbell v. Louisiana*, __ U.S. __, 118 S. Ct. 29 (1997).

On April 2, 1997, petitioner filed a petition for writ of certiorari to this Court, based upon, *inter alia*, the denial of his motion to quash the grand jury indictment because of alleged racial discrimination in the selection of the grand jury foremen in Evangeline Parish, Louisiana.

On September 29, 1997, this Court granted the petition for writ of certiorari, limited to Question No. 1 as presented by the petitioner.

2. Motion to Quash Grand Jury Indictment

Prior to the first trial, petitioner's then-counsel Jesse B. Hearin filed a *Motion To Quash Grand Jury Indictment*, alleging that the indictment was defective because "the grand jury foreperson selection process in Evangeline Parish is discriminatory and violates the Sixth and the Fourteenth Amendment to the United States Constitution . . . ." *Pet.* at F-2 and F-3. Following a hearing on the motion on December 2, 1993, the trial judge ruled that the petitioner, a white defendant, lacked standing under the Equal Protection Clause and/or Due Process Clause to complain about alleged racial discrimination, and therefore, denied the motion. *Pet.* at G-1 through G-34, H-1 and H-2. The trial court's oral reasons for judgment, summarily denied in a written order, do not specifically address petitioner's purported claim under the fair cross-section requirement of the Sixth Amendment. Further, because petitioner was found to lack standing, the trial judge did not rule whether petitioner had established a *prima facie* case of racial discrimination in the selection of grand jury foremen in Evangeline Parish, and hence the State

has yet to be afforded an opportunity to rebut, if necessary, a *prima facie* showing of racial discrimination.[3] The trial court subsequently issued its written judgment on December 6, 1993, confirming the denial of the motion to quash. *Pet.* at G-1 through G-34, H-1 and H-2.

On direct appeal to the Louisiana Court of Appeal, Third Circuit, petitioner again asserted as the first assignment of error the trial court's denial of the motion to quash the grand jury indictment. Petitioner also objected to the denial of his motion for a new trial on the same basis.

In *State v. Campbell*, 651 So. 2d 412, 413-414 (La. Ct. App. 3d Cir. 1995), *rev'd*, 661 So. 2d 1321 (La. 1995), *reh'g denied*, 661 So. 2d 1374 (La. 1995), *cert. denied*, __ U.S. __, 116 S. Ct. 1673 (1996), *on remand*, 673 So. 2d 1061 (La. Ct. of App. 3d Cir. 1996), *writ denied*, 685 So. 2d 140

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[3] In petitioner's brief on the merits, Campbell seeks the reversal of his conviction. *See Pet. Br.* at 15 and 44. Likewise, the National Association Of Criminal Defense Lawyers (NACDL), also urges the reversal of petitioner's conviction. *See A. C. Br.* at 5 and 18. Both ignore the law and the record, which plainly demonstrate that if petitioner is successful in convincing this Court that he has standing on any claim for relief, the appropriate course of action is a decision by this Court on whether petitioner has established a *prima facie* case of racial discrimination and if so, a remand to the Thirteenth Judicial District Court to allow the State of Louisiana an opportunity to rebut that showing. In the alternative, this Court could simply vacate the Louisiana Supreme Court's ruling and remand to the district court with an order that the district court re-open the evidentiary hearing to rule on whether petitioner has established a *prima facie* case of racial discrimination and, if so, to allow the State an opportunity to present rebuttal evidence. *See Rose v. Mitchell*, 443 U.S. 545 (1979) and *Castenada v. Partida*, 430 U.S. 482 (1977)(both recognizing in the context of state grand jury foremen and state grand juries, respectively, that once the challenger establishes a *prima facie* case of racial discrimination, the State is afforded an opportunity to rebut that presumption). Petitioner's and *amicus'* contentions to the contrary urging summary reversal are simply erroneous and should be ignored.

(La. 1997), *cert. granted in part, Campbell v. Louisiana*, __ U.S. __, 118 So. 2d 29 (1997), the Third Circuit, in addressing petitioner's first assignment of error reversed the trial court's finding that petitioner, a white male, lacked standing to allege racial discrimination against blacks in the grand jury foreman selection process in Evangeline Parish based upon the Equal Protection Clause of the Fourteenth Amendment as interpreted by *Powers v. Ohio*, 499 U.S. 400 (1991). The Third Circuit further ordered the matter remanded for a full evidentiary hearing based upon defendant's equal protection and due process claims, finding that petitioner's statistical information was inadequate under *State v. Young*, 569 So. 2d 570, 575 (La. Ct. App. 1 Cir. 1990), *writ denied*, 575 So. 2d 386 (La. 1991).[4] *State v. Campbell*, 651 So. 2d at 413-414. Although the Court remanded the matter to the trial court on due process as well as equal protection grounds, there is no discussion in the Third Circuit's opinion related to this Court's decision in *Hobby v. United States*, 468 U..S. 339 (1984). *Id.* Further, the Third Circuit opinion does not address any perceived claim petitioner contends he made under the fair cross-section requirement of the Sixth Amendment. *Id.* Given the ruling of the Third Circuit, the Court did not reach petitioner's other assignments of error until the case was remanded to that Court following the Louisiana Supreme Court's decision denying the petitioner standing under the

[4] Quite remarkably, counsel for petitioner and *amicus* again fail to recognize the unequivocal ruling of the Third Circuit finding petitioner's proof of racial discrimination inadequate. First, one might even question whether petitioner should be allowed a second opportunity to establish a *prima facie* case of racial discrimination, having failed in the first instance. *See Rose, supra* at 573. Second, petitioner's counsel himself requested a remand to the trial court in his brief to the Louisiana Supreme Court. *See Joint Motion to Enlarge the Record* at 79-81.

Equal Protection and Due Process Clauses. *See State v. Campbell*, 661 So. 2d 1321, 1324 (La. 1995), *reh'g denied*, 661 So. 2d 1374 (La. 1995), *cert. denied*, __ U.S. __, 116 S. Ct. 1673 (1996), *on remand*, 673 So. 2d 1061 (La. Ct. App. 3d Cir. 1996), *writ denied*, 685 So. 2d 140 (La. 1997), *cert. granted in part, Campbell v. Louisiana*, __ U.S. __, 118 S. Ct. 29 (1997). *See also Pet.* at D-2 through D-5, A-1 through A-8, E-2 through E-29, and B-1.

Following the Third Circuit's decision granting Campbell standing to proceed with his motion to quash the grand jury indictment, then-District Attorney J. William Pucheu filed an application for writ of certiorari and review with the Louisiana Supreme Court; in an opinion issued on October 2, 1995, the Supreme Court in *State v. Campbell*, 661 So. 2d 1321 (La. 1995), granted the State's writ application in a *per curiam* opinion, reversed the Third Circuit, and held that petitioner lacked standing to bring his equal protection and due process claims.

3. Decision of the Louisiana Supreme Court

In the opinion that is now the subject of review by this Court pursuant to 28 U.S.C. § 1257, the Supreme Court of Louisiana held that petitioner, as a white male, lacked standing under the Equal Protection Clause of the Fourteenth Amendment to bring a claim of racial discrimination against African-Americans in the selection process of grand jury foremen in Evangeline Parish, Louisiana. *See State v. Campbell*, 661 So. 2d at 1324. The Court denied petitioner's due process claim under *Hobby v. United States*, 461 U.S. 339 (1984), finding that the Louisiana's position of grand jury foreman is ministerial in nature, and therefore, constitutionally insignificant. The Court did not issue any opinion under the Sixth Amendment fair cross-section requirement. *Id.*

The Louisiana Supreme Court reasoned that Campbell lacked standing under *Rose v. Mitchell*, 443 U.S. 545 (1979), to press an equal protection claim. 661 So. 2d at 1322-1324. The Court expressly declined petitioner's invitation to extend *Powers v. Ohio*, 499 U.S. 400 (1991), to the context of state grand jury foremen. *Id.* Further, the Court ruled that given the ministerial nature of Louisiana's grand jury foremen, this Court's holding in *Hobby*, precluded any relief under the Due Process Clause. *Id.* Following its decision, the Louisiana Supreme Court remanded the case back to the Third Circuit for consideration of petitioner's remaining assignments of error on appeal, all of which were subsequently denied by the lower appellate court and upon which the state's highest court declined to invoke supervisory jurisdiction. *Id.* and 685 So. 2d 140 (La. 1997).

SUMMARY OF THE ARGUMENT

1. Petitioner, as a white male, has not and cannot meet his burden of establishing standing under the Equal Protection Clause of the Fourteenth Amendment, either under Article III of the United States Constitution, or under this Court's decision in *Powers v. Ohio*, 499 So. 2d 400 (1991), related to *jus tertii* (third-party) standing, given the nature of his alleged injury and the alleged targets of the racial discrimination.

First, under Article III, petitioner was required to establish the three essential components of standing: an injury-in-fact; causation; and redressability. He has failed to do this and therefore there is no case or controversy as constitutionally required by Article III.

Second, this Court's decision in *Powers*, as illustrated by the more recent racial gerrymandering decision of *United States v. Hays*, __ U.S. ___, 115 S. Ct. 2431 (1995), should not be extended to afford Campbell third-party standing. Unlike an illegal peremptory challenge that excludes a particular individual from petit jury service, Campbell's complaint is far more general. Campbell alleges that the judges of the Thirteenth Judicial District Court, Parish of Evangeline, specifically excluded undisclosed African-Americans (whose identities he has yet to prove despite no showing that the data is not available) from service over a 16½-year period of time as foremen of 35 different grand juries on the basis of their race. Because Campbell's claim is more closely akin to the challengers' claims of racial gerrymandering in *Hays*, this Court's analysis in *Hays* recognizing that plaintiffs' claim of racial gerrymandering as only a "general grievance" should apply with equal force in the context of alleged racial discrimination against African Americans in the service as state grand jury foremen brought by a white criminal defendant.

Accordingly, the rationale of *Powers* does not apply because Campbell only alleges a "general grievance" of racial discrimination shared by all citizens of the State of Louisiana. Therefore, this Court should hold that a white criminal defendant does not have standing under the Equal Protection Clause of the Fourteenth Amendment to complain of racial discrimination in the selection process of state grand jury foremen, absent membership in the excluded class. Such a limitation on the logical extreme of *Powers* is historically consistent with this Court's equal protection analysis long ago recognized in *Rose v. Mitchell*, 443 U.S. 545 (1979), and *Castaneda v. Partida*, 430 U.S. 482 (1977).

2. The position of grand jury foreman under Louisiana law, as recognized by the State's highest court in *State v. Campbell*, 661 So. 2d. at 1324, is constitutionally

insignificant in that the functions of that position are ministerial in nature. In contrast to the state grand jury foreman's role at issue in the Tennessee system in *Rose,* a Louisiana grand jury foreman has no special power not shared by the remaining 11 members and two alternates. The Louisiana grand jury foreman's duties are plainly ministerial, similar to those at issue in the federal grand jury system analyzed in the *Hobby* decision. Given the ministerial nature of the Louisiana grand jury foreman, and this Court's decision in *Hobby*, petitioner cannot prevail under the Due Process Clause given no constitutionally protected interest is being infringed.

3. Petitioner has never adequately presented his Sixth Amendment claim to any state court. No state court has ever ruled on this claim. Therefore, Campbell's fair cross-section claim is not properly before this Court and should be denied. *Adams v. Robertson*, __U.S.__, 117 S.Ct. 1028, 1029 (1997).

Further, no Sixth Amendment right attaches to the position of grand jury foreman. The right to an impartial jury guaranteed by the Sixth Amendment demands that jury members be drawn from a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975). While a defendant who is denied this right is entitled to challenge the composition of such a venire regardless of whether he or she is a member of the underrepresented group, *Holland v. Illinois*, 493 U.S. 474 (1990), the Sixth Amendment right to an impartial jury does not attach to the single grand jury foreman position. In a fair cross-section analysis the focus is on the system and whether it yields an impartial jury. This analysis only applies to groups, such as a grand or petit juries, which can represent society as a whole. The individual grand jury foreman alone cannot be a fair cross-section of his or her community.

ARGUMENT

I. A white criminal defendant should be denied standing under the Equal Protection Clause of the Fourteenth Amendment to bring a claim of racial discrimination against African-Americans in the selection process of state grand jury foremen.[5]

Without any analysis or explanation, petitioner summarily argues to this Court that racial identity between himself and the alleged racially excluded prospective grand jurors from service as grand jury foremen is "irrelevant" despite this Court's express holdings in the two controlling cases, *Rose v. Mitchell*, 443 U.S. 545 (1979), and *Castaneda v. Partida,* 430 U.S. 482 (1977),[6] based upon this Court's

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[5] Louisiana law refers to this position on a state grand jury as "foreman" regardless of gender. *See* La.C.Cr.P. art. 413 (West 1992) and (West 1997). We adopt the practice herein.

[6] In *Rose* this Court reviewed the *habeas corpus* claim of two black prisoners attacking the lack of a black grand jury foremen in Tipton County, Tennessee. This Court relied on its prior decision in *Castaneda* where the Court considered allegations of discrimination in the selection of grand jurors in Texas brought by a Mexican-American defendant concerning the exclusion of other Mexican-Americans. *Rose* adopted the three-prong test used in *Castaneda* for an equal protection claim: "Thus, in order to show that an equal protection violation has occurred in the context of grand jury selection, the defendant must show that the procedure employed resulted in substantial underrepresentation of *his race or of the identifiable group to which he belongs.* The first step is to establish that the group is a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied. Next, the degree of underrepresentation must be proved, by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors, over a significant period of time .... Finally,...a selection process that is susceptible of abuse or is not racially neutral supports the presumption of discrimination raised by the statistical showing." *Castaneda*, 97 S.Ct. at 494-495 (citations omitted, emphasis added).

earlier plurality decision in *Peters v. Kiff*, 407 U.S. 493 (1972) and in light of this Court's more recent 7-2 decision of *Powers v. Ohio*, 499 U.S. 400 (1991). *See Br. Pet.* at 15, 17-20, 28-31 and 44. Campbell argues that ["T]herefore, as in *Powers*, the fact that petitioner's race differs from that of the excluded members is irrelevant to the analysis of his standing to object to the discriminatory practice in question." *Br. Pet.* at 31 (emphasis in original). The NACDL, as *amicus curiae*, makes the same conclusory analysis that the result herein under the Equal Protection Clause is a "foregone conclusion" and is "simply the logical, necessary, and inexorable application of this Court's prior case law." [7] *See A.C. Br.* at 4-5, 9.

To the contrary, the State of Louisiana respectfully submits that *Powers* and the earlier plurality decision in *Peters*, which was based on the Due Process Clause and federal statutory law, do not, *ipso facto*, grant a white defendant standing under the Equal Protection Clause of the Fourteenth Amendment when one considers the alleged targets of racial discrimination and the vast difference between the judicial bodies at issue. Moreover, contrary to Campbell's argument, this Court should expressly decline petitioner's invitation to expand *Powers* beyond the context of peremptory challenges of prospective petit jurors under *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny. While the petitioner and *amicus* assert that the Louisiana Supreme Court misapplied this Court's holdings when it denied Campbell standing to pursue equal protection and due process claims, the opposite is true. In light of this Court's

[7] If the Louisiana Supreme Court's decision in this matter was controlled by *Powers*, then one would presume that this Court would vacate that portion of the decision and remand in light of *Powers*. Obviously, this Court's granting of the petition for writ of certiorari suggests that the result is not a "foregone conclusion."

most recent decision on the issue of standing in *United States v. Hays*, ___ U.S. ___, 115 S.Ct. 2431 (1995), the Supreme Court of Louisiana correctly refused petitioner's invitation to disregard the judicial restraint encompassed in that doctrine. Further, the Louisiana Supreme Court's denial of standing under the Due Process Clause is entirely consistent with *Hobby*.

A. Petitioner, as a white male, has not and cannot demonstrate either Article III standing or *jus tertii* standing under *Powers v. Ohio*, 499 U.S. 400 (1991), given the uncontested fact that the targets of his equal protection claim of alleged racial discrimination are undetermined African-Americans residing in Evangeline Parish, Louisiana.

1. Article III standing

In the context of equal protection, standing under Article III of the United States Constitution requires that Campbell demonstrate why this Court must entertain his claim of racial discrimination against a-class of people to whom he himself does not belong. A plaintiff is generally precluded "from asserting a generalized injury, often said to be suffered 'by all or a large class of citizens.' " Guilds, *A Jurisprudence Of Doubt: Generalized Grievances As A Limitation To Federal Court Access*, 74 N.C.L.R. 1863, 1864 (1996), citing *Association of Data Processing Services Organizations, Inc. v. Camp*, 397 U.S. 150 (1970).

In two equal protection cases, *United States v. Hays*, __ U.S. __, 115 S.Ct. 2431, 2435 (1995) (involving voting rights and racial gerrymandering of Congressional districts) and *Allen v. Wright*, 468 U.S. 737, 751 (1984) (involving racial segregation), this Court denied federal court access to plaintiffs despite their claims of racial discrimination. In

light of petitioner's concession that Louisiana's method of selecting state grand jury foremen is not, *per se*, unconstitutional and in light of the constitutionally insignificant role of a state grand jury foreman under Louisiana law, as fully explained *infra*, petitioner has not shown the necessary elements sufficient to establish standing for purposes of an equal protection claim. *See Pet. Br.* at 7 ("[p]etitioner asserted that the grand jury foreperson selection process *as applied* in Evangeline Parish excluded blacks and was discriminatory and violated the equal protection clause . . . . ") (emphasis in original).

At a minimum, and based upon the doctrines of federalism and separation of powers, Article III requires that a plaintiff establish three prerequisites prior to gaining redress for a claimed federal constitutional violation: an injury-in-fact, by which this Court means "a legally protected interest that is [both] 'concrete and particularized and actual or imminent, not conjectural or hypothetical,' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)(plurality opinion)(plaintiffs lacked standing for failing to demonstrate their injury was sufficiently "actual or imminent" in that they claimed only to return someday to areas of the world where particular endangered species lived); "a causal relationship between the injury and the challenged conduct," *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41 (1976)(". . . we have steadfastly adhered to the requirement that, at least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.")(citation omitted); and "a likelihood that the injury will be redressed by a favorable decision." *See* Flickinger, *Standing In Racial Gerrymandering Cases*, 49 Stan.L.R. 381, 384-385 (1997). *See also Simon*, 426 U.S. at

45 (". . . the complaint suggest no substantial victory in this suit would result in respondents' receiving the hospital treatment they desire.")

a. Injury-in-fact

Campbell does not argue that he personally has standing to complain, as a white criminal defendant, that African-Americans residing in Evangeline Parish, Louisiana, were denied an opportunity to serve as foremen of that parish's grand juries for the past 16 ½ years under general standing principles. At the hearing on the motion to quash, petitioner's trial counsel, Mr. Hearin, told the trial court: "But, Terry's rights have not been violated. Terry is asserting third party rights of those excluded." *See Pet.* at G-9. In the context of equal protection, the only standing case of this Court that petitioner cites to this Court is *Powers v. Ohio*, a third-party standing case. *See Pet. Br.* at 27-31.

In addition to petitioner's express concession, the record before this Court does not establish that Campbell has Article III standing given the undisputed fact that Campbell is not a member of the allegedly excluded class, and he has not shown any imminent or actual injury to himself. In *O'Shea v. Littleton*, 414 U.S. 488 (1974), *judgment vacated, Spomer v. Littleton*, 414 U.S. 514 (1974), this Court denied standing to plaintiffs seeking an injunction against allegedly discriminatory enforcement of criminal laws; despite what might have been termed "past wrongs," this Court declined Article III standing without a showing that plaintiff's injuries are "sufficiently real and immediate to show an existing controversy." *Id.*, at 496. *See also Los Angeles v. Lyons*, 461 U.S. 95, 110-113 (1983) (recognizing imminent injury needed for standing to seek injunctive relief; plaintiff did not have standing to request an injunction against the Los Angeles Police Department to prevent future use of

unconstitutional choke holds. While plaintiff himself may have suffered personal injury from such a choke hold, such a past injury did not afford him standing for injunctive relief). While admittedly Campbell is not seeking an injunction against the judges of the Thirteenth Judicial District to prohibit them from selecting state grand jury foremen, given the fact that petitioner is not a member of the harmed class, he, unlike the plaintiffs in *O'Shea* and *Lyons*, has not alleged and cannot allege any personal injury to himself.

Further, Campbell has no proven actual injury. In the death penalty standing case of *Whitmore v. Arkansas,* 495 U.S. 149, 157-158 (1990), this Court declined to allow one death row inmate standing to intervene on behalf of another death row inmate, who had waived his right to appellate review. In writing for this Court, Chief Justice Rehnquist called the injury "too speculative" when the inmate claimed that he was harmed because data concerning the other inmate's case would not be added to the Arkansas database. *Id.* at 157.

Likewise, there is no merit to Campbell's position that a white male criminal defendant who was indicted by a 12-member grand jury composed of nine whites (including the white grand jury foreman) and three blacks was personally harmed because judges had presumptively excluded African-Americans from service as foremen for the past 16 ½ years. *See also Joint Stipulation Of Counsel, supra,* note 1, p. 1-2.

b. Causation and redressability

Campbell has the burden of establishing causation[8] and redressability, the two other components of standing

[8] As noted previously, *supra* at 6, the Third Circuit for the Louisiana Court of Appeals rejected petitioner's statistical data as insufficient under *State v. Young, supra,* because the only data provided related to the general population statistics for Evangeline Parish and the racial breakdown for registered voters in Evangeline Parish despite the fact that state grand jury venires may be drawn from numerous other sources, such as motor vehicle license and registration records or utility customers, depending on the judicial district. *See* La.C.Cr.P. art. 414 (West 1992). *See also State v. Campbell,* 651 So. 2d at 412-414, and 673 So. 2d at 1063. This finding was made despite the District Attorney and the defense stipulating to the testimony of the registrar of voters, which would support the inference that, for the past 16 ½ years, all foremen in Evangeline Parish were white. Accordingly, given the uncontested holding of the Third Circuit, the State of Louisiana relies upon the record in this Court that petitioner has failed to establish the middle component of standing -- causation. *See also James v. Whitley,* 39 F. 3d 607, 611 (5th Cir. 1994)(black criminal defendant failed to prove the degree of underrepresentation required to establish an equal protection claim despite inferential evidence that no black had served as grand jury foreman in Ascension Parish, Louisiana, since 1965, and the black population of Ascension Parish for the time period in question was 27 percent.)

under Article III. While redressability is related to injury-in-fact and causation, redressability requires that it be " 'likely' as opposed to merely 'speculative' that the injury will be 'redressed by a favorable decision.' " Guilds, *supra,* at 1874-75. *See also Allen, supra,* 468 U.S. at 753 n.19 (" [t]o the extent there is a difference [between causation (i.e. "fairly traceable") and redressability], it is that the former examines the causal connection between the assertedly unlawful conduct and the alleged injury, whereas the latter examines the causal connection between the alleged injury and the judicial relief requested.")

To establish standing, this Court must find that Campbell, as a white male, is entitled to the relief he is seeking. Campbell assumes that "the rule of automatic reversal," *Vasquez v. Hillary,* 474 U.S. 254, 272 (1986) (Powell, J. dissenting), logically applies to a reversal of an

otherwise fair conviction on account of alleged racial discrimination in the selection of the indicting grand jury foreman. *Rose v. Mitchell* is certainly no such case: "Each respondent is a Negro." 443 U.S. at 548. To apply such a draconian prophylactic to Campbell's case, we respectfully submit, simply goes too far. "All rights tends to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached." *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 355 (1908)(per HOLMES, J.), *overruled other grds., Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982). Campbell's indicting grand jury included three African-Americans, and it is difficult to perceive how his alleged claim of discrimination in the selection of the ministerial foreman at issue here constitutes "injury in fact" to him -- "distinct *and papable*," *Warth v. Seldin*, 422 U.S. 490, 501 (1975)(emphasis added), "particular [and] *concrete*," *United States v. Richardson*, 418 U.S. 16, 17 (1974)(emphasis added), "specific [and] *objective*," *Laird v. Tatum*, 408 U.S. 1, 14 (1972)(emphasis added).

In Terry Campbell's case, we submit, the societal costs of releasing a fairly convicted killer outweigh this Court's rigorous *Rose* rejection of Mr. Justice Jackson's competing practical wisdom. *See Cassell v. Texas*, 339 U.S. 282, 298 (1950)(JACKSON, J., dissenting).

The State of Louisiana submits further that Campbell is not the proper champion of his purported cause of eliminating racial discrimination against African-Americans in the selection of grand jury foremen. In particular, we strenuously object to *amicus'* suggestion that unless white criminal defendants are given standing under the Equal

Protection Clause, black criminal defendants in Louisiana are without an effective forum to seek redress for wrongs committed against their race. *Amicus* NACDL argues to this Court that "the fact that racial discrimination in the selection of grand jury foreman persists in Louisiana to this day, provides a perfect illustration of why defendants, regardless of their race, have standing to challenge the exclusion of identifiable classes from jury service, since obviously, in the seventeen years since *Guice*, [presumably *Guice v. Fortenberry [Guice II]*, 722 F. 2d 276 (5th Cir. 1984)] the excluded class itself has not pursued any challenge to the discriminatory practice." *A.C. Br.* at 14 (citations omitted).

Amicus' argument is patently incorrect in light of a long line of cases to the contrary, which demonstrate that black criminal defendants in Louisiana have brought forth equal protection claims regarding the exclusion of blacks from service as state grand jury foremen. *See Williams v. Cain*, 125 F. 3d 269 (5th Cir. 1997)(claim of race discrimination in selection of foreman of grand jury was procedurally barred); *Deloch v. Whitley*, 684 So. 2d 349 (La. 1996)(same); *James v. Whitley*, 39 F. 3d 607 (5th Cir. 1994), *cert. denied*, 514 U.S. 1069 (1995); *State v. Davis*, 626 So. 2d 800 (La. Ct. App. 2d Cir. (1993), *writ denied*, 632 So. 2d 762 (La. 1994)(African-American defendant failed to show venire systematically excluded persons on basis of race); *State ex rel. Williams v. Whitley*, 629 So. 2d 343 (La. 1993); *State v. Mays*, 612 So. 2d 1040 (La. Ct. App. 2d Cir. 1993), *writ denied*, 619 So. 2d 576 (La. 1993); *State v. Thomas*, 609 So. 2d 1078 (La. Ct. App. 2d Cir. 1992), *writ denied*, 617 So. 2d. 905 (La. 1993) (black defendant failed to establish *prima facie* case that selections of grand jury foremen in Caddo Parish was discriminatory); *State v. Young*, 569 So. 2d 570 (La. Ct. App. 1 Cir. 1990), *writ denied*, 575 So. 2d 386 (La. 1991); *State v. James*, 459 So. 2d 1299, 1308 (La.

Ct. App. 1 Cir. 1984), *writ denied*, 463 So. 2d 600 (La. 1985)(black defendant had not established a *prima facie* case of discrimination in the selection of state grand jury foremen because defendant did not establish the number of grand juries that were convened or the number of foremen appointed); *Boykins v. Maggio*, 715 F. 2d 995 (5th Cir. 1983), *cert. denied, Boykins v. Blackburn*, 466 U.S. 940 (1984); *Guice v. Fortenberry, [Guice I]*, 661 F. 2d 496 (5th Cir. 1981)(*en banc*)(absent positive proof of the actual number of grand jury foremen chosen, black defendants had not proven a *prima facie* case of discrimination in the selection of state grand jury foremen; evidence based on statutory requirements only inferential evidence, not positive proof); *Guice II*, 722 F. 2d 276 (5th Cir. 1984);and *State v. Barksdale*, 170 So. 2d 374 (La. 1964), *cert. denied, Barksdale v. Louisiana*, 382 U.S. 921 (1965).

2. *Jus tertii* standing in light of *Powers v. Ohio*, 499 U.S. 400 (1991)

The State respectfully submits that this Court's rationale of allowing a white criminal defendant in *Powers* third-party standing to seek redress for the exclusion of particular black prospective petit jurors on the basis of their race is not applicable to the position of grand jury foreman. Your Honors should decline to extend *Powers* to this context, lest this Court's constitutional constructs reach too high: "This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one too many is added." *Douglas v. City of Jeannette*, 319 U.S. 157, 181 (1943) (Opinion of JACKSON, J.).

Despite the *Powers* decision, this Court in *United States v. Hays*, *supra*, held that white plaintiffs who lived outside the voting district in question would be denied standing under the Equal Protection Clause of the Fourteenth Amendment to bring a claim against racial gerrymandering because those plaintiffs "have not otherwise demonstrated that they, personally, have been subjected to a racial classification." *Hays*, 515 U.S. at 739.

In *Hays*, this Court held that the plaintiffs had presented only a "general grievance against allegedly illegal governmental conduct" which was insufficient to establish standing. *Id.* at 743. This Court stated:

> The rule against generalized grievances applies with as much force in the equal protection context as in any other. *Allen* v. *Wright* made clear that even if a governmental actor is discriminating on the basis of race, the resulting injury "accords a basis for standing only to 'those persons who are personally denied equal treatment' by the challenged discriminatory conduct."

Id., at 743-44. And more: "Only those citizens able to allege injury 'as a direct result of having personally been denied equal treatment' may bring such a challenge, and citizens who do so carry the burden of proving their standing, as well as their case on the merits." *Id.* at 746, (citations omitted).

We say the same thing here. Campbell is attempting to stand in the shoes of numerous African-Americans included on voter roles (and perhaps other venire sources which petitioner has yet to identify despite the absence of any showing that the information is not a matter of public record) who allegedly have been denied the right to sit as foremen of an Evangeline Parish grand jury for the past 16 ½

years. This is akin to the type of harm realized in the case of racial gerrymandering of congressional voting districts and is not the type of personal injury upon which the *Powers* court allowed third-party standing.

The State submits that the interests relied upon by this Court in *Powers* are not present when the judicial entity in question is the foreman of the state grand jury as opposed to the petit jury deciding the ultimate question of guilt or innocence. First, the alleged constitutional violation in the context of service as state grand jury foremen does not occur during the trial itself. Second, the integrity of the verdicts of the grand and petit juries are not called into question. Third, the relationship between a white criminal defendant and the excluded class of prospective grand jurors of another race who were not called to serve as state grand jury foremen for the prior 16 1/2 years is tenuous, at best. Fourth, unlike the undisputed remedy of reversal available to a successful litigant in the context of *Batson* and its progeny and in the context of racial discrimination in the selection of the state grand jury itself under *Vasquez v. Hillery*, 474 U.S. 254, 264 (1986)[9], the remedy under a proven *Rose* claim has never

[9] The State of Louisiana recognizes this Court's decision that if discrimination in the selection of the *grand jury itself* occurs, the proper remedy is reversal of the subsequent conviction. The State, however, suggests that, for reasons enunciated by Justice Powell in dissent, the same remedy is not constitutionally required if the discrimination in *Vasquez* occurs only in the selection of the grand jury foreman, as *Hobby, supra*, illustrates. *See Vasquez*, 474 U.S. at 255-283 (Powell, J., dissenting, in which Burger, C.J., and Rehnquist, J. joined). *See also United States v. Musto*, 540 F. Supp. 346, 361 (D.N.J. 1982)(holding that underrepresentation of women as grand jury foremen did not require dismissal of indictments, noting that *Rose* was "merely dictum" as it concerns a finding that the role of grand jury foreman was a constitutionally significant function, and observing that the Fifth Circuit in *Guice I* "followed the dictum...without elaboration") and *Ford v. Seabold*, 841 F. 2d 677, 689 (6th Cir. 1988), *cert. denied*, 488 U.S. 928 (1988)(reversal of conviction on ground that blacks were excluded from jury commission for a 20-year period not required since Ford "suffered no prejudice and any discrimination in the appointment of the commissioners would not undermine the integrity of the indictment and conviction. . . .")

been squarely ruled upon by this Court, certainly not as to a white defendant.[10]

II. Article III of the United States Constitution requires that a white criminal defendant be denied standing under the Due Process Clause of the Fourteenth Amendment to bring a claim of racial discrimination against African-Americans in the selection process of state grand jury foremen in that the ministerial nature of that position affords him no remedy, and petitioner has not otherwise established the standing prerequisites.

Petitioner has failed to carry his burden of proving standing under the Due Process Clause in that he had made no attempt to establish the prerequisite standing requirements

[10] Counsel for respondent is well aware of the Fifth Circuit line of cases that require automatic reversal. The Fifth Circuit in *Guice I* held that reversal was the proper remedy by simply "[a]ccepting the Supreme Court's assumption that discrimination in the selection of a grand jury foremen in violation of the equal protection clause mandates that the conviction be vacated." *Guice I*, 661 F. 2d at 499 (footnote omitted). But even the Fifth Circuit is not so doctrinaire as to accept Campbell's submissions to this Court. *See United State v. Cronn*, 717 F.2d 164 (5th Cir. 1983), *cert. denied, Cronn v. United States*, 468 U.S. 1217 (1984)(Anglo male defendant without standing to assert, on equal protection grounds, that females and racial minorities were underrepresented as grand jury forepersons.) Viewing the "assumption" in *Rose* in light of the more recent *Hobby* decision decided under the Due Process Clause of the Fifth Amendment, the *Hobby* decision strongly suggests that reversal is not constitutionally required.

of Article III outside the boundaries of the *Powers* decision. Campbell has not alleged that he personally was injured as to establish "an injury-in-fact." Further, he has failed to establish causation. Finally, in light of this Court's decision in *Hobby,* Campbell has failed to contest the ministerial nature of the Louisiana grand jury foreman position, and therefore, due process affords him no remedy even assuming a violation occurred.

In entertaining petitioner's pre-trial motion to quash the grand jury indictment, the trial court held that Campbell lacked standing to bring a claim under the Equal Protection and/or Due Process Clauses. *See Pet.* G-31 through G-33. While the parties to the evidentiary hearing discussed the *Hobby* decision, the trial court's oral reasons for judgment simply state that petitioner lacked standing under both the Equal Protection and/or the Due Process Clauses.

The decision of the Louisiana Third Circuit Court of Appeal finds standing under the Equal Protection and Due Process Clauses, but only cites this Court's opinion in *Powers,* which is clearly only an equal protection case. The Third Circuit does, however, suggest that the role of a Louisiana grand jury foreman may be merely ministerial. *See Pet.* at D-2 through D-5.

Finally, the Louisiana Supreme Court relies on both *Rose* and *Hobby* when it finds that Campbell did not have standing under either the Equal Protection or the Due Process Clauses of the Fourteenth Amendment. [11]

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[11] The Louisiana Supreme Court held that "[u]nder *Hobby*, defendant does not have standing to bring a due process claim challenging discrimination against blacks in the selection of grand jury foremen, as in that case, the Supreme Court held that the 'ministerial role of the office of federal grand jury foreman is not such a vital one that discrimination in the appointment of an individual to that post

In *Hobby* this Court refused to reverse a federal conviction of a defendant who had alleged racial discrimination against blacks and women in the selection of the grand jury that indicted him. This Court noted that "the responsibilities of a federal grand jury foreman are essentially clerical in nature." 468 U.S. at 344. Thus, this Court concluded that, "[s]imply stated, the role of the foreman of a federal grand jury is not so significant to the administration of justice that discrimination in the appointment of that office impugns the fundamental fairness of the process itself so as to undermine the integrity of the indictment." *Id.* at 345.

A. The duties of a state grand jury foreman are ministerial as defined by *Hobby v. United States*, 468 U.S. 339 (1984), and therefore, are of no constitutional significance.

The role of the grand jury foreman in Louisiana, as in the federal system, is ministerial only. Although prior decisions of the Fifth Circuit found reversal was the proper remedy, those decisions did not address the role of the state grand jury foreman in Louisiana. Further, the Louisiana Supreme Court has itself determined that "[t]he role of the grand jury foreman in Louisiana appears to be similarly ministerial." *State v. Campbell,* 661 So. 2d at 1324. *See also State of Louisiana ex rel. Williams v. Whitley*, 629 So. 2d 343 (La. 1993)(Marcus, J., dissenting, "[t]he role of the foreman of the grand jury in Louisiana appears to be ministerial in nature.").

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significantly invades the distinctive interests of the defendant protected by the Due Process Clause.' " *State v. Campbell,* 661 So. 2d at 1324.

Quite notably, petitioner has neither claimed that La.C.Cr.P. art. 413 is unconstitutional under any provision of the United States Constitution nor has he attacked the selection process of the grand jury venire itself.[12] Instead, petitioner limits his attack to saying that art. 413 "*as applied*" violates his equal protection rights. *See Br. Pet.* at 7.

Further, Louisiana law supports a finding that the position of grand jury foreman is ministerial. La.C.Cr.P. art 436 (West 1992) provides that a foreman "shall preside over all hearings", "may delegate duties to other grand jurors" and "may determine rules of procedures." All witnesses shall be sworn by the grand jury foreman prior to testifying. La.C.Cr.P. art. 440 (West 1992). Nine of the grand jurors are required to concur in "a true bill" or "not a true bill," and the indictment must be signed by the foreman, and the lack thereof forms one of the basis to quash the bill of indictment. La. C.Cr.P. arts. 383, 444 and 533(5) (West 1992).[13]

At one time Louisiana jurisprudence held to the effect that the failure to comply with the statutory requirement of La. C.Cr.P. art. 383 (that an indictment must be signed by the grand jury foreman) was a fatal defect in the document. *State v. Stoma*, 6 So. 2d 650 (1942) and jurisprudence relied on therein. Under present Louisiana law, the absence of this signature has been termed a "procedural irregularity" and a

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[12] In *Guice II* the Fifth Circuit noted that "because the foreman [in Louisiana is] selected from the venire rather than from the grand jury itself, any discrimination in the selection of a foreman necessarily taint[s] the composition of the grand jury as well: only eleven of its twelve members were chosen at random." *Guice II*, 722 F. 2d at 282 n. 6. If that is so, petitioner may obtain relief by challenging the composition of the grand jury, and this he has failed to do.

[13] A defendant must also file a motion to quash the grand jury indictment on the basis of racial discrimination in the selection process or else the claim is likewise waived. *See Deloch v. Whitley, supra.*

"technical insufficiency" which may be regarded as waived if not raised prior to at least the verdict. *State v. Mouton,* 319 So. 2d 33, 319 So. 2d 331, 332 (La. 1975), relying on *State v. James*, 305 So. 2d 514 (La. 1974).

In *James* the Louisiana Supreme Court concluded that: "[W]here in fact an accused has been fairly informed on the charge against him by the indictment and has not been prejudiced by surprise or lack of notice, the technical sufficiency of the indictment may not be questioned after conviction where, as here, no objection was raised to it prior to the verdict . . . " *Id.* at 516.

The Court in *Mouton* recognized that the reasons for requiring the signature of the foreman on an indictment involves "accentuating the deliberateness of the grand jury's finding" and that such interests are adequately served when a "duly designated representative on the grand jury such as an assistant foreman, signs due to the absence, inability or unwillingness of the foreman to sign.:

> We are unwilling to believe that the legislature intended to prevent any action by the grand jury unless concurred in by the foreman. He is only one of twelve grand jurors, of whom nine only need concur to find a true bill or not.

State v. Mouton, supra. at 332, La.C.Cr. P. arts. 413, 444 (B).

The State submits it can hardly be construed that this signature requirement is important enough to raise the position of grand jury foreman to the level of constitutional significance required to establish a violation of the Due Process Clause of the Fourteenth Amendment.

A grand juror who objects to a rule of procedure implemented by the grand jury foreman may apply to the court for a determination of the matter. La.C.Cr.P. art. 436. This authority of any grand juror to appeal to the court

prevents autocratic control by the foreman. Further, while the Tennessee grand jury foreman at issue in *Rose* served for two years terms on successive grand juries and actively assisted the Tennessee district attorney in criminal investigations, the counterpart in Louisiana has no investigative power not shared as a whole with the 11 other grand jurors, is presumably replaced every six months as is the entire grand jury, and it is the grand jury as a body that issues subpoenas and subpoenas *duces tecum*.

Because a Louisiana grand jury foreman performs only clerical duties, discrimination in the selection of a foreman "does not in any sense threaten the interests of the defendant protected by the Due Process Clause."[14] *Hobby*, 468 U.S. at 344. *See also United States v. Musto*, 540 F. Supp. 346 (D.N.J. 1982), *judgment aff'd, United States v. Aimone*, 715 F. 2d 822 (3d Cir. 1983), *cert. denied, Dentico v. United States*, 468 U.S. 1217 (1984) and *Musto v. United States*, 468 U.S. 1217 (1984)(duties of federal grand jury foreman ministerial; refusing to quash indictment because women had not been appointed as foremen over five-year period affirmed); *Andrews v. State*, 443 So. 2d 78 (Fla. 1983)(assuming discrimination in selection of grand jury foreman, such discrimination would not require quashing where role of foreman ministerial).

For the foregoing reasons, the Louisiana Supreme Court correctly decided that Campbell failed to establish the necessary prerequisites to establish standing to raise a claim under the Due Process Clause of discrimination against a class to which he does not belong.

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[14] The State of Louisiana respectfully submits that the discussion of the ministerial nature of the position of grand jury foreman in *Hobby* is applicable to any examination of this issue, regardless of the constitutional basis on which a challenge is made.

III. While a white male defendant has standing under the Sixth Amendment to seek redress for a claim that the grand jury that indicted him does not represent a fair cross-section of the community, such a claim is not applicable to the position of state grand jury foreman.

A. Petitioner's Sixth Amendment claim was never properly presented to any state court.

Petitioner claims he is entitled to federal review on the basis of a fair cross-section analysis under the Sixth Amendment. A review of the record herein demonstrates that Louisiana state courts did not rule on petitioner's Sixth Amendment fair cross-section claim because petitioner never adequately presented such a claim to these courts. Furthermore, even before this Court, petitioner has focused his claims for relief only on the Equal Protection and the Due Process Clauses of the Fourteenth Amendment and has not cited the leading fair cross-section cases of *Holland v. Illinois*, 493 U.S. 474 (1990), and *Duren v. Missouri*, 439 U.S. 357 (1979). While petitioner summarily articulated the terms "Sixth Amendment" and "fair cross-section" in pleadings or briefs, the mere articulation of these terms cannot and should not be construed, in any sense, as a fair or proper presentation of the issue to either the state courts or to this Court.

More importantly, no state court including Louisiana's highest court, has ever acknowledged or ruled upon either standing to bring such a claim or its merits. With "very rare exceptions" this Court will not consider a petitioner's federal claim unless it was addressed by, or properly presented to, the state court that rendered the decision to be reviewed. Further, when the highest state court is silent on a federal question, it is assumed that the issue

was not properly presented and the aggrieved party bears the burden of defeating this assumption by demonstrating the state court had a "fair opportunity to address the federal question that is sought to be presented . . . ." *Adams v. Robertson*, ___U.S.___, 117 S.Ct. 1028, 1029 (1997).

Petitioner has therefore failed to demonstrate that the state courts of Louisiana had a fair opportunity to pass upon his Sixth Amendment fair cross-section claim. It is evident from the record[15] that petitioner has elected to pursue no broader or additional claims beyond the equal protection and due process challenges. At best, his Sixth Amendment challenge is a potential contention that was never advanced in or entertained by any state court.

Review on the basis of a Sixth Amendment claim is not warranted.

B. No Sixth Amendment right attaches to the position of state grand jury foreman.

If this Court decides that the Sixth Amendment itself is implicated regardless of whether the judicial body at issue is the grand jury, or just the grand jury foreman, then the State concedes that under *Holland v. Illinois*, petitioner has standing to assert a Sixth Amendment challenge.

A claimed violation of the Sixth Amendment involves the issue of whether a defendant has been denied the right to an impartial jury and, in particular under the present facts, whether the selection process and role of the grand jury foreman implicate or threaten petitioner's right to an impartial jury. The Sixth Amendment guarantees all criminal defendants the right to a "speedy and public trial, by an impartial jury." This right demands that jury members be

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15 *See Joint Motion to Enlarge the Record, supra.*

drawn from a fair cross-section of the community. *Taylor v. Louisiana*, 419 U.S. 522, 527 (1975). It is well established that the Sixth Amendment right to trial by an impartial jury includes the right to be indicted by a grand jury composed of members drawn from a source representing a fair cross-section of the community. *Duren v. Missouri*, 439 U.S. 357 (1979). The Sixth Amendment entitles every defendant to object to a venire that is not designed to represent a fair cross-section of the community, whether or not the systematically excluded groups are groups to which he himself belongs. *Holland v. Illinois*, 493 U.S. 474 (1990).

In a fair cross-section challenge "the focus is not on discriminatory conduct but instead is on whether the jury selection system is impartial and will yield a microcosm of the community which can fairly represent the views of all persons within the society." *Taylor, supra*, 419 U.S. at 522. *Holland*, 493 U.S. at 480.

Even if Campbell possesses standing under the Sixth Amendment to challenge the grand jury foreman selection process, it is the contention of the State of Louisiana that the Sixth Amendment right to an impartial jury has no application to the position of grand jury foreman. *United States v. Sneed*, 729 F.2d 1333, 1335 n.2 (11th Cir. 1984); *United States v. Holman*, 680 F.2d 1340, 1357 (11th Cir. 1982); and *United States v. Perez-Hernandez*, 672 F.2d 1380, 1385 (11th Cir. 1982).

The fair cross-section analysis is designed primarily to provide "jury review" as a buffer for the people from the abuses of government power. The emphasis is on the system rather than on the individual citizen. *See* Amar, *The Bill Of Rights As A Constitution*, 100 Yale L.J. 1131, 1182-89 (1991). The Sixth Amendment right to an "impartial jury" is given full effect by insuring that distinct groups of the community are represented, but are not given the opportunity

to dominate or, in the alternative, denied the opportunity to participate in a democratic system of justice. *United States v. Perez-Hernandez*, 672 F.2d at 1385. Neither of these purposes is offended when disproportionate representation is shown in the office of foreman on grand juries whose members were drawn from panels reflecting a fair cross-section of the community from which they were drawn, and the petitioner has not attacked the composition of the grand jury venire itself. *Peters v. Kiff*, 407 U.S. at 503-4.

The 11th Circuit has recognized:

> Accordingly, the fair cross-section analysis is only applicable to groups, such as a grand or petit jury, which can represent society as a whole. One person alone cannot represent the divergent views, experience, and ideas of the distinct groups which form a community. Thus, a grand jury foreman is a member of the group which represents a cross-section of his or her community, but he or she cannot be a fair cross-section of that community. Since we are not presented with a fair cross-section challenge to the entire venire of the grand jury below, we must affirm the trial court's ruling on this issue.

Perez-Hernandez, 672 F.2d at 1385, relying on *Taylor v. Louisiana*, 419 U.S. at 530 and *Peters v. Kiff*, 407 U.S. at 503.

Petitioner does not now or has he ever challenged the selection process of the grand jury which would be a *group* susceptible to a Sixth Amendment fair cross-section challenge. His challenge has always been to the selection process related to the single position of grand jury foreman. The mere selection of the foreman by the court in an allegedly discriminatory manner cannot alter the

representative character of the grand jury itself. This one position simply does not in any sense threaten or even implicate the interests of the petitioner protected by the Sixth Amendment. As a result, no Sixth Amendment right attaches to a challenge of the position of grand jury foreman.

CONCLUSION

Louisiana in no way condones race discrimination in the administration of criminal justice, in any corner. But to extend *Powers* to cover Terry Campbell's claim is, we respectfully submit, to substitute doctrinaire logic for practical wisdom.

For the foregoing reasons, the judgment of the Louisiana Supreme Court should be affirmed.

Respectfully submitted,

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NOTE: Petitioner Terry Campbell was indicted in 1992 and therefore, that version of the pertinent Louisiana law has been reproduced for this Court's convenience. Footnotes indicate any subsequent changes in the law.

APPENDIX A
Louisiana Revised Statutes, Title 14, Crimial Law Chapter 1, Part II, Offenses Against the Person, Subpart A. Homicide.

§ 30.1. Second degree murder

A. Second degree murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm;

B. Whoever commits the crime of second degree murder shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. (Legislative history omitted.)

APPENDIX B
Louisiana Code of Criminal Procedure,
Title X. Instituting Criminal Prosecutions

Art. 382. Methods of instituting criminal prosecutions

A. A prosecution for an offense punishable by death, or for an offense punishable by life imprisonment, shall be instituted by indictment by a grand jury. Other criminal prosecutions in a district court shall be instituted by indictment or by information. *Amended by Acts 1974, Ex.Sess. No. 19, § 1, eff. Jan. 1, 1975; Acts 1989, No. 8, § 1; Acts 1994, 3rd Ex.Sess., No. 83, § 1.*

Art. 383. Indictment

An indictment is a written accusation of crime made by a grand jury. It must be concurred in by not less than nine of the grand jurors, indorsed "a true bill," and the indorsement must be signed by the foreman. Indictment shall be returned into the district court in open court; but when an indictment has been returned for an offense which is within the trial jurisdiction of another court in the parish, the indictment may be transferred to that court.

APPENDIX C
Louisiana Code of Criminal Procedure,
Title XI. Qualifications and Selection Of Grand...Jurors

Art. 401. General qualifications of jurors

A. In order to qualify to serve as a juror, a person must:

(1) Be a citizen of the United states and of this state who has resided within the parish in which he is to serve as a juror for at least one year immediately preceding his jury service.

(2) Be at least eighteen years of age.

(3) Be able to read, write, and speak the English language and be possessed of sufficient knowledge of the English language.

(4) Not be under interdiction or incapable of serving as a juror because of a mental or physical infirmity, provided that no person shall be deemed incompetent solely because of the loss of hearing in any degree.

(5) Not be under indictment for a felony nor have been convicted of a felony for which he has not been pardoned.

B. Notwithstanding any provision in subsection A, a person may be challenged for cause on one or more of the following:

(1) A loss of hearing or the existence of any other incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

(2) When reasonable doubt exists as to the competency of the prospective juror to serve as provided for in Code of Criminal Procedure Art. 787. *Amended by Acts 1972, No. 695, § 1; Acts 1984, No. 655, § 1.*

Art. 403. Exemption from jury service

Exemptions from jury service shall be as provided by rules of the Louisiana Supreme Court pursuant to Section 33(B) of Article V of the Louisiana Constitution of 1974. *Amended by Acts 1968, No. 108, § 1; Acts 1970, No. 450, §1; Acts 1972, No. 35, § 1; Acts 1972, No. 282, §1; Acts 1972, No. 523, § 1; Acts 1974, ex.Sess., No. 22, § 1, eff. Jan. 1, 1975.*

Art. 403.1 Disqualification for undue hardship

If the judge who presided over the impaneling of the grand jury finds that a grand juror can no longer serve without undue hardship, he may disqualify such juror and a substitute juror shall be selected in the same manner as for filling of a vacancy. *Added by Acts 1980, No. 467, § 1.*

Art. 404. Appointment of jury commission; term of office; oath; quorum; performance of function[1] in the parish of East Baton Rouge by the judicial administrator

Except in the parish of East Baton Rouge:

(1) The jury commission of each parish shall consist of five members, each having the qualifications set forth in Article 401.

(2) In Orleans Parish the jury commission shall be appointed by the governor, and the commissioners shall serve at his pleasure. In other parishes the jury commission shall consist of the clerk of court or a deputy clerk designated by him in writing to act in his stead in all matters affecting the jury commission, and four other persons appointed by written order of the district court, who shall serve at the court's pleasure.

(3) Before entering upon their duties, members of the jury commission shall take an oath to discharge their duties faithfully.

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[1] *[See 1992 version for A and B].* C. In the parish of Lafourche the function of the jury commission may be performed by the clerk of court of the parish of Lafourche or by a deputy clerk of court designated by him in writing to act in his stead in all matters affecting the jury commission. The clerk of court or his designated deputy shall have the same powers, duties, and responsibilities, and shall be governed by applicable provisions of law pertaining to jury commissioners. The clerk of court of the parish of Lafourche shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner. Amended by Acts 1993, No. 632 § 1.

(4) Three members of the jury commission shall constitute a quorum.

(5) Meetings of the jury commission shall be open to the public.

b In the parish of East Baton Rouge the function of the jury commission shall be performed by the judicial administrator of the Nineteenth Judicial district court or by a deputy judicial administrator designated by him in writing to act in his stead in all matters affecting the jury commission. The judicial administrator or his designated deputy shall have the same powers, duties and responsibilities, and be governed by those provisions of law as presently pertain to jury commissioners which are applicable, including the taking of an oath to discharge their duties faithfully. The clerk of court of the parish of East Baton Rouge shall perform the duties and responsibilities otherwise imposed upon him by law with respect to jury venires, shall coordinate the jury venire process, and shall receive the compensation generally authorized for a jury commissioner. *Amended by Acts 1975, No. 259, § 1.*

Art. 405. Notice of jury commission meetings

Each member of the jury commission shall be notified in writing of the time and place designated for a meeting of the commission, at least twenty-four hours prior to the meeting.

The notice shall be issued by one of the members or the secretary of the jury commission in Orleans Parish, and

by the clerk of court in all other parishes, and shall be served in the manner provided for service of subpoenas.

Art. 406. Powers of jury commission; penalty for disobedience of commission process

In order to secure qualified jurors, the jury commission may issue subpoenas to compel the attendance of witnesses and the production of evidence relative to the qualifications of prospective jurors.

Disobedience of a subpoena of a jury commission is punishable as contempt of court.

Art. 407. Administration of oath to witnesses

A jury commissioner shall administer an oath to each witness appearing before the commission, in accordance with Article 14.

Art 408. Selection of general venire in parishes other than Orleans

A. In parishes other than Orleans, the jury commission shall select impartially at least three hundred persons having the qualifications to serve as jurors, who shall constitute the general venire. A list of persons so selected shall be prepared and certified by the clerk of court as the general venire list, and said list shall be kept as part of the records of the commission. The name and address of each person on the list shall be written on a separate slip of paper, with no designation as to race or color, which shall be placed in a box labeled "General Venire Box."

B. After the jury commission has selected the general venire, it shall lock and seal the general venire box and deliver it to the clerk of court, as the custodian thereof. Alternatively, the list of persons so selected may be retained in a form suitable for use by a properly programmed electronic device commonly known as a computer.

C. The jury commission shall meet at least once every six months and when ordered by the court, and may meet at any time to select or supplement the general venire. The commission may select a new general venire at any meeting and shall do so when ordered by the court. *Amended by Acts 1968, No. 140, § 1; Acts. 1972, No. 755, §1.*

Art. 410. Revising and supplementing the general venire

At each commission meeting to revise and supplement the general venire, the commission shall examine the general venire list prepared at the previous selection of the general venire and shall delete therefrom the names of those persons who:

(1) Have served as civil or criminal jurors since the previous selection of the general venire; or

(2) Are known to have died or who have become disqualified to serve as jurors since their selection on the general venire.

The slips bearing the names of those persons deleted from the general venire list shall be removed from the general venire box.

The commission shall then supplement the list prepared at the previous commission meeting and the

corresponding slips in the box by selecting a sufficient number of additional persons in compliance with Article 408 or Article 409, whichever is applicable. Where the general venire list is maintained in a form suitable for use by an electronic device commonly known as a computer, the general venire shall likewise as hereinabove provided be deleted and supplemented. *Amended by Acts 1972, No. 755, § 1.*

Art. 411. Drawing of grand jury venire in parishes other than Orleans; disposition of slips; jury box; subpoena of persons on grand jury venire

A. Upon order of the court the jury commission in parishes other than Orleans shall select by drawing indiscriminately and by lot from the general venire box the names of at least twenty but not more than one hundred persons, with the number to be specified by the court in its order, who shall constitute the grand jury venire. Alternatively, the grand jury venire may be drawn with the use of a properly programmed electronic device commonly known as a computer. A grand jury venire shall not be drawn from a general venire containing fewer than three hundred names.

B. The slips containing the names of the persons so drawn shall be placed in an envelope which shall be sealed and the words "Grand Jury Venire: written thereon.

C. The sealed envelope shall be placed in a box labeled "Grand Jury Box:, which shall be locked and sealed and placed in the custody of the clerk of court for use at the next term of court, subject to the orders of the district court, as hereinafter provided.

D. (1) The clerk shall prepare subpoenas directed to the persons on the grand jury venire, ordering their appearance in court on the date set by the court for the selection of the grand jury, and shall deliver the subpoenas to the sheriff for service.

(2) The sheriff, at the election of the district judges of the judicial district in which the parish lies, may serve such subpoenas by:

(a) Personal or domiciliary service, or by registered, certified, or regular mail addressed to the juror at his usual residence or business address.

(b) When the service is by mail, the date of mailing shall be not less than fifteen days prior to the date on which the addressee is subpoenaed to appear.

(c) When service is by registered or certified mail, the sheriff shall attach to his return the return receipt of delivery from the United States Post Office showing the disposition of the envelope bearing the summons to the juror.

(d) When service is by regular mail, the return shall show the date of mailing. In case of service by regular mail, prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested.

(3) The return, with the attached return receipt of delivery, when received by the clerk, shall form part of the record and shall be considered prima facie correct and shall constitute sufficient basis for an action to cite persons for contempt for failure to appear in response thereto. *Amended*

by Acts 1968, No. 141, § 1; Acts 1970, No. 297, § 1; Act 1972, No. 755, § 1; Acts 1977, No. 552, § 1; Acts 1987, No. 281, § 1.

Art. 413. Method of impaneling of grand jury; selection of foreman

A. The grand jury shall consist of twelve persons plus a first and second alternate for a total of fourteen persons qualified to serve as jurors, selected or drawn from the grand jury venire.

B. In parishes other than Orleans, the court shall select one person from the grand jury venire to serve as foreman of the grand jury. The sheriff shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filing vacancies as provided in Article 415.

C. In the parish of Orleans, the court shall select twelve persons plus a first and second alternate for a total of fourteen persons from the grand jury venire, who shall constitute the grand jury. The court shall thereupon select one of the jurors to serve as foreman.

D. The first and second alternates shall receive the charge as provided in Article 432 but shall not be sworn nor become members of the grand jury except as provided in Article 415. *Amended by Acts 1990, No. 47, § 1.*

Art. 414. Time for impaneling grand juries; period of service

A. A grand jury shall be impaneled twice a year in each parish, except in the parish of Cameron in which at least one grand jury shall be impaneled each year.

B. In parishes other than Orleans, the court shall fix the time at which a grand jury shall be impaneled, but no grand jury shall be impaneled for more than eight months, nor less than four months, except in the parish of Cameron in which the grand jury may be impaneled for a year.

C. In Orleans Parish, a grand jury venire shall be drawn by the jury commission on the date set by the presiding judge. On the next legal day following the drawing, the jury commission shall submit the grand jury venire to the presiding judge, who shall impanel the grand jury. A grand jury in Orleans Parish shall be impaneled on the first Wednesday of March and September of each year.

D. A grand jury shall remain in office until a succeeding grand jury is impaneled. A court may not discharge a grand jury or any of its members before the time for the impaneling of a new grand jury, except for legal cause. *Amended by Acts 1985, No. 675, § 1.*

Art. 415. Method of filling vacancies on grand jury

A. When a vacancy occurs on a grand jury, the court shall fill the vacancy as follows:

(1) In parishes other than Orleans, by administering the oath to and seating the first alternate if he is still legally qualified and available, or if he is not, by administering the oath to and seating the second alternate, if still legally qualified and available. If a vacancy occurs after the second alternate has been seated on the grand jury to fill a vacancy or if the second alternate cannot be seated, the vacancy shall be filled by ordering the sheriff to draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. If the names in the envelope be exhausted before the grand jury is completed, or if a vacancy occurs on the grand jury and no names remain in the envelope, the court shall order the jury commission to withdraw indiscriminately and by lot from the general venire box an additional number of names sufficient to complete the grand jury.

(2) In Orleans Parish, by administering the oath to and seating the first alternate if he is still legally qualified and available, or if he is not, by administering the oath to and seating the second alternate, if still legally qualified and available. If a vacancy occurs after the second alternate has been seated to fill a vacancy or if the second alternate cannot be seated, the vacancy shall be filled by ordering the jury commission to draw indiscriminately and by lot from the general venire box twelve or more names, as specified by the court, from which the court shall select the persons necessary to fill the vacancy.

B. If the foreman of the grand jury is, for any reason, unable to act, the court shall designate some member of the grand jury to serve as acting foreman or to serve as a new foreman of that grand jury. An acting foreman has the powers and duties of the foreman. *Amended by Acts 1990, No. 47, § 1.*

Art. 415.1. Selection of additional grand juries

Upon the request of the district attorney, the court shall order one additional grand jury to be impaneled. Such additional grand jury shall be selected in the same manner and have the same qualifications, duties, powers, and responsibilities, and be subject to the same provisions of law which presently govern grand juries, except as to duration and the duty to inspect facilities as provided by R.S. 15:121. However, no grand jury may concurrently conduct an inquiry into any offense or matter or receive evidence of any offense or matter which is under investigation by another grand jury impaneled in the same parish. This additional grand jury shall be impaneled and presided over by the judge who impaneled the existing regular grand jury or a judge appointed by him to act in his absence. *Added by Acts 1975, Ex.Sess. No. 45, § 1, eff. Feb. 20, 1975. Amended by Acts 1975, No. 569, § 1; Acts 1980, No. 467, § 1; Acts 1990, No. 74, § 1.*

Art. 415.2. Duration of additional grand juries; extension of impanelment

Grand juries impaneled in accordance with Article 415.1 shall remain impaneled for a period not to exceed one year unless discharged sooner by the court upon motion of the district attorney. Provided, however, that prior to the discharge of a grand jury by the court, a grand jury shall return its report on all offenses and matters presented or pending before it as authorized by the provisions of Article 444. Upon the request of the district attorney, the court may extend this time limit for an extra six months. *Added by Acts 1975, Ex.Sess., No. 45, § 1, eff. Feb. 20, 1975. Amended by Acts 1975, No. 569, § 1.*

Art. 416.1. One-step qualification/summoning

A. In parishes other than Orleans, at the election of the judges of the judicial district in which the parish lies, the qualification questionnaire, subpoena, and return envelope for each person who may be selected for the petite jury venire shall be prepared by the clerk and delivered in the same computer-generated envelope to the sheriff for service. The sheriff may serve such questionnaire and subpoena by first class mail addressed to such person at his usual residence or business address. The subpoena shall state an appearance date for such person not later than three weeks after the date on which the questionnaire is to be returned.

B. The questionnaire shall contain a section for signature to acknowledge receipt of the accompanying subpoena. The addressee of the subpoena and questionnaire shall fill out, sign, and return the questionnaire in the return envelope by first class mail, within five days of receipt thereof. The signing of the questionnaire shall constitute acknowledgment of receipt of the subpoena and personal service of the subpoena on the addressee.

C. The questionnaire may constitute part of the sheriff's return and may be made part of the record. When served in accordance with this Section, a person may be cited for contempt for failing to appear in response to the subpoena. *Added by Acts 1982, No. 701, § 1.*

Art. 417. Proces verbal; summoning of petit jurors; parishes other than Orleans

A. In parishes other than Orleans, the clerk of court shall make a proces verbal of the selection of the general venire and of the drawing of the grand jury venire and of the

petite jury venire. It shall be certified to by a member of the commission and shall be filed in the clerk's office as a public record.

The clerk shall make a list of the names on the grand jury venire and on the petit jury venire, showing the week for which each petit jury venire is to service. The lists, together with the general venire list, shall be a part of the proces verbal.

B. The clerk shall cause a copy of the petit jury venire list and grand jury venire list to be published in the official journal of the parish, if there be one, or in some other newspaper published in the parish, or if there is no official journal or other newspaper in said parish, he shall post a copy of the lists on the door of the courthouse.

C. (1) The clerk shall prepare subpoenas directed to the persons on the petit jury venire and deliver them to the sheriff for service.

(2) The sheriff, at the election of the district judges of the judicial district in which the parish lies, may serve such subpoenas by:

(a) Personal or domiciliary service, or by registered, certified, or regular mail addressed to such juror at his usual residence or business address.

(b) When the service is by mail, the date of mailing shall not be less than fifteen days prior to the date on which the addressee is subpoenaed to appear.

(c) When service is by registered or certified mail, the sheriff shall attach to his return the return receipt of

delivery from the United States Post Office showing the disposition of the envelope bearing the summons to the juror.

(d) When service is by regular mail, the return shall show the date of mailing. In case of service by regular mail, prior to any contempt citation, the person shall be served by registered or certified mail with return receipt requested.

(3) The return, with the attached return receipt of delivery, when received by the clerk, shall form part of the record and shall be considered prima facie correct and shall constitute sufficient basis for an action to cite persons for contempt for failure to appear in response thereto. *Amended by Acts 1972, No. 755, § 1; Acts 1987, No. 281, § 1.*

Art. 419. Challenge of venire not permitted except for fraud or irreparable injury or systematic exclusion based on race.

A. A general venire, grand jury venire, or petit jury venire shall not be set aside for any reason unless fraud has been practiced, some great wrong committed that would work irreparable injury to the defendant, or unless persons were systematically excluded from the venires solely upon the basis of race.

B. this Article does not affect the right to challenge for cause, a juror who is not qualified to service. *Amended by Acts 1987, No. 638, § 1.*

APPENDIX D
Louisiana Code of Criminal Procedure, Title XII. The Grand Jury

Art. 431. Oath of grand jury

The grand jurors shall take the following oath when impaneled:

"As members of the grand jury, do you solemnly swear or affirm that you will diligently inquire into and true presentment make of all indictable offenses triable within this parish which shall be given you in charge, or which shall otherwise come to your knowledge; that you will keep secret your own counsel and that of your fellows and of the state, and will not, except when authorized by law, disclose testimony of any witness examined before you, nor disclose anything which any grand juror may have said, or how any grand juror may have voted on any matter before you; that you will not indict any person through malice, hatred, or ill will, nor fail to indict any person through fear, favor, affection, or hope of reward or gain; but in all of your indictments you will present the truth, according to the best of your skill and understanding?"

The oath shall be read to the grand jury by the clerk, who shall then ask each juror: "Do you take this oath or affirmation?:

The oath shall be administered to every grand juror appointed to fill a vacancy in the grand jury and to every grand juror who was not present at the taking of the oath by the grand jury.

Art. 432. Charge to grand jury

After the oath is administered to the members of the grand jury, the judge shall charge them orally in open court upon their duties, rights, and powers. Upon completion of the charge the judge shall give the grand jury a written copy of the charge.

At any time thereafter, the judge, on his own initiative or on request of the grand jury, may give the grand jury additional charges concerning their duties, rights, and powers. Such additional charges shall be given in open court, and a written copy thereof shall thereafter be given to the grand jury.

Art. 433. Persons present during grand jury sessions[2]

A. (1) Only the following persons may be present at the sessions of the grand jury:

(a) The district attorney and assistant district attorneys or any on or more of them;

(b) The attorney general or an assistant attorney general;

(c) The witness under examination;

(d) A persons sworn to record the proceedings of and the testimony given before the grand jury; and

(e) An interpreter sworn to translate the testimony of a witness who is unable to speak the English language.

(2) An attorney for a target of the grand jury's investigation may be present during the testimony of said target. The attorney shall be prohibited from objecting, addressing or arguing before the grand jury; however he may

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2. A. (1) Only the following persons may be present at the sessions of the grand jury: *[See 1992 version for (a)]*; (b) The attorney general and assistant attorneys general or any one of the; *[See 1992 version for (c) to (e)]*. (2) An attorney for a target of the grand jury's investigation may be present during the testimony of said target. The attorney shall be prohibited from objecting, addressing or arguing before the grand jury; however he may consult with his client at anytime. The court shall remove such attorney for violation of these conditions. If a witness becomes a target because of his testimony, the legal advisor to the grand jury shall inform him of his right to counsel and cease questioning until such witness has obtained counsel or voluntarily and intelligently waived his right to counsel. Any evidence or testimony obtained under the provisions of this Subparagraph from a witness who later becomes a target shall not be admissible in a proceeding against him. *[See 1992 version for B and C]*. Amended by Acts 1992, No. 308 § 1.

consult with his client at anytime. The court shall remove such attorney for violation of these conditions. If a witness becomes a target because of his testimony, the legal advisor to the grand jury shall inform him of his right to counsel and cease questioning until such witness has obtained counsel or voluntarily and intelligently waived his right to counsel. Any evidence or testimony obtained under the provisions of this Subparagraph from a witness who later becomes a target shall not be admissible in a proceeding against him.

B. No person, other than a grand juror, shall be present while the grand jury is deliberating and voting.

C. A person who is intentionally present at a meeting of the grand jury, except as authorized by Paragraph A of this article, shall be in constructive contempt of court. *Amended by Acts 1972, No. 409, §1; Acts 1986, No. 725, § 1.*

Art. 434. Secrecy of grand jury meetings; procedures for crimes in other parishes

A. Members of the grand jury, all other persons present at a grand jury meeting, and all persons having confidential access to information concerning grand jury proceedings, shall keep secret the testimony of witnesses and all other matters occurring at, or directly connected with, a meeting of the grand jury. However, after the indictment, such persons may reveal statutory irregularities in grand jury proceedings to defense counsel, the attorney general, the district attorney, or the court, and may testify concerning them. Such persons may disclose testimony given before the grand jury, at any time when permitted by the court, to show that a witness committed perjury in his testimony before the grand jury. A witness may discuss his testimony given before the grand jury with counsel for a person under investigation

or indicted, with the attorney general or the district attorney, or with the court.

B. Whenever a grand jury of one parish discovers that a crime may have been committed in another parish of the state, the foreman of that grand jury, after notifying his district attorney, shall make that discovery known to the attorney general. The district attorney or the attorney general may direct to the district attorney of another parish any and all evidence, testimony, and transcripts thereof, received or prepared by the grand jury of the former parish, concerning any offense that may have been committed in the latter parish, for use in such latter parish.

C. Any person who violates the provisions of this article shall be in constructive contempt of court. *Amended by Acts 1972, no. 450, § 1.*

Art. 435. Meetings of grand jury

The grand jury shall meet as directed by the court, or may meet on its own initiative at the direction of nine of its members, at any time and place within the parish. Nine grand jurors shall constitute a quorum, and nine grand jurors must concur to find an indictment. *Amended by Acts 1975, Ex.Sess., No. 45, § 2, eff. Feb. 20, 1975.*

Art. 436. The foreman; rules of procedure

The foreman of the grand jury shall preside over all hearings. He may delegate duties to other grand jurors and may determine rules of procedure. A grand juror who objects to a rule of procedure made by the foreman may apply to the court for a determination of the matter.

Art. 437. Inquiry into offenses; authority and duties

The grand jury shall inquire into all capital offenses triable within the parish. It may inquire into their offenses triable by the district court of the parish, and shall inquire into such offenses when requested to do so by the district attorney or ordered to do so by the court.

Art. 438. Duty of grand juror having knowledge of offense; investigation

If a grand juror knows or has reason to believe that an offense triable by the district court of the parish has been committed, he shall declare such fact to his fellow jurors, who may investigate it. In such investigation or any subsequent criminal proceeding the grand juror shall be a competent witness.

Art. 439. Subpoena of witnesses to appear before the grand jury

Upon request of the grand jury or the district attorney, the court shall issue a subpoena for a witness to appear before the grand jury to testify when questioned by the grand jury or district attorney, or both, concerning an offense under investigation. Upon request of the grand jury or the district attorney, the court may also issue a subpoena duces tecum. The issuance, service, and return of a subpoena provided for in this article and the effect of the return and the enforcement of the subpoena shall be as provided in Articles 731 through 737.

Art. 439.1. Witnesses; authority to compel testimony and evidence

A. In the case of any individual who has been or may be called to testify or provide other information at any proceeding before or ancillary to a grand jury of the state, at any proceeding before a court of this state, or in response to any subpoena by the attorney general or district attorney, the judicial district court of the district in which the proceeding is or may be held shall issue, in accordance with subsection B of this article, upon the request of the attorney general together with the district attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in subsection C of this article.

B. The attorney general together with the district attorney may request an order under subsection A of this article when in his judgment

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self incrimination.

C. The witness may not refuse to comply with the order on the basis of his privilege against self incrimination, but no testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement or otherwise failing to comply with the order.

D. Whoever refuses to comply with an order as hereinabove provided shall be adjudged in contempt of court and punished as provided by law. *Added by Acts 1972, No. 410, § 1.*

Art. 440. Administration of oath to witness

A witness who is to testify before the grand jury shall first be sworn by the foreman, in accordance with Article 14, to testify truthfully and to keep secret, except as authorized by law, matters which he learns at the grand jury meeting. *Amended by Acts 1988, No. 515, § 3, eff. Jan. 1, 1989.*

Art. 441. Administration of oath to other persons

Before being permitted to function in their respective capacities, the court shall administer an oath, to persons employed to record and transcribe the testimony and proceedings, and to interpreters, to faithfully perform their duties and keep secret the grand jury proceedings.

Art. 443. When indictment to be found

The grand jury shall find an indictment, charging the defendant with the commission of an offense, when, in its judgment, the evidence considered by it, if unexplained and uncontradicted, warrants a conviction.

Art. 444. Action by grand jury

A. A grand jury shall have power to act, concerning a matter, only in one of the following ways:

(1) By returning a true bill;

(2) By returning not a true bill; or

(3) By permitting entirely the matter investigated.

The grand jury is an accusatory body and not a censor of public morals. It shall make no report or recommendation, other than to report is action as aforesaid.

B. At least nine members of the grand jury must concur in returning "a true bill" or "not a true bill." A matter may be pretermitted by a vote of at least nine members of the grand jury, or as a consequence of the failure of nine of the grand jury members to agree on a finding.

C. A grand jury may make such reports or requests as are authorized by law.

APPENDIX E
Louisiana Code of Criminal Procedure
Title XV. Motion To Quash

Art. 533. Special grounds for motion to quash grand jury indictment

A motion to quash an indictment by a grand jury may also be based on one or more of the following grounds:

(1) The manner of selection of the general venire, the grand jury venire, or the grand jury was illegal.

(2) An individual grand juror was not qualified under Article 401.

(3) A person, other than a grand juror, was present while the grand jurors were deliberating or voting, or an unauthorized person was present when the grand jury was examining a witness.

(4) Less than nine grand jurors were present when the indictment was found.

(5) The indictment was not indorsed "a true bill," or the endorsement was not signed by the foreman of the grand jury.

APPENDIX F
The Constitution of the United States of America, Article III.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- to all Cases affecting Ambassadors, other public Ministers and Consuls; -- to all Cases of admiralty and maritime Jurisdiction; -- to Controversies to which the United States shall be a Party; -- to Controversies between two or more States; -- between a State and Citizens of another State; -- between Citizens of different States; -- between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

APPENDIX G
The Constitution of the State of Louisiana of 1974 Article I. Declaration of Rights.

§ 15. Initiation of Prosecution

Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.